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SIPDIS

SENSITIVE

DEPARTMENT FOR EUR/OHI AND EUR/AGS

E.O. 12958: N/A

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SUBJECT: AUSTRIA'S GOVERNMENT AND JEWISH COMMUNITY REACH AGREEMENT

REF: A) 94 VIENNA 4396 B) VIENNA 1482

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11. (SBU) SUMMARY: On May 25, the Austrian Jewish Community (IKG) and the GOA announced that pending questions regarding the IKG's restitution claims had been resolved. In addition, a solution was on the way to address the IKG's demands for the ongoing financing of the community. IKG President Muzicant will now withdraw as amicus curiae in the Whiteman case, which is apparently the sole remaining impediment to legal peace as per the 2001 U.S.-Austrian Washington Agreement on Holocaust property issues. The IKG will also withdraw its 777 claims under General Settlement Fund (GSF), which will have the effect of increasing the pool of funds available to other Holocaust victims with claims against Austria. The GOA hopes to be able to start payments from the GSF in early 2006. Please see action request for EUR/OHI in para 9. End Summary.

IKG-GOA Agreement

12. (U) Following a meeting of the General Settlement Fund (GSF) board of trustees, the GOA and the IKG announced on May 25 that the IKG will receive an additional 18.2 million Euro as restitution payment. In return, the IKG will withdraw its 777 claims under the GSF. The source of the 18.2 million Euro is the surplus from the Reconciliation Fund for the compensation of former forced and slave laborers, as agreed by that fund's board of trustees in December 2004 (ref a). In addition, the IKG will receive additional support from the Interior, Education and Social Affairs Ministries for the financing of its security needs and social infrastructure. In return, the IKG will withdraw as an amicus curiae in the Whiteman case, which is holding up legal peace required for payments from the GSF to begin.

Whiteman Case

13. (SBU) IKG Executive Director Erika Jakubovits told Emboffs on May 25 that the IKG will now instruct its lawyer to file a brief to withdraw from the Whiteman class action case. In the brief, the IKG will present the benefits for the class as a result of the IKG's agreement with the GOA. Jakubovits was hopeful of convincing the class of claimants, as well as the court, of these benefits. In a May 25 TV interview, IKG President Muzicant said he would do "everything in his power" to reach legal peace. Muzicant stressed that the agreement provides a real basis for the existence and the future of the IKG in Austria. Jakubovits also noted that, in addition to the 18.2 million payments for the IKG's restitution claims, the GOA has committed itself to support projects for a school and an old-age home, and to defray the IKG's substantial security costs.

IKG Request to USG

14. (SBU) Jakubovits asked for support from the USG for two proposals: Regarding the exchange rate for the 210 million US Dollars to be paid out by the GSF, the IKG suggests that, for payments to claimants, this amount be converted according to the exchange rate valid at the time of the conclusion of the Washington Agreement, i.e. January 17, 2001. This reinterpretation of the Washington Agreement would provide another compelling argument for dismissal of the Whiteman case. Jakubovits also suggested that in-rem restitution of publicly owned property according to the Washington Agreement could be implemented before legal peace.

Seeking ways to accelerate payments under the GSF

15. (U) In a public statement, Parliamentary President Andreas Khol, who chairs the GSF board of trustees,

expressed the hope that payments to claimants could start in March 2006. Khol emphasized that the GSF was doing everything to accelerate the processing of claims. Should it not be possible to finish processing at the beginning of 2006, Khol, as well as MFA Legal Adviser Hans Winkler, indicated that the Fund would look for ways to make advance payments, at a minimum in the Equity-Based Category where a relaxed standard of evidence applies. GSF Secretary General Hannah Lessing noted that the Fund will consult with legal experts during the week of May 31 regarding the possibility of making advance payments.

Anderman Case

16. (SBU) Regarding the Anderman class action, an MFA Legal Affairs officer confirmed Legal Adviser Hans Winkler's announcement last week that in the GOA's view, the Anderman case had lapsed, since the plaintiffs had not filed an objection to the dismissal within the prescribed deadline. IKG Executive President Jakubovits agreed with this interpretation.

Altmann Case

17. (SBU) Regarding the arbitration agreement on the claim to six Gustav Klimt paintings currently in the possession of the Austrian Gallery, the MFA confirmed that, under the terms of the arbitration agreement, Maria Altmann has undertaken immediately to withdraw her lawsuit in California. The two arbitrators appointed by Altmann and the GOA, Professor Walter Rechberger and Dr. Andreas Noedl, respectively, are to appoint a head of the panel by the end of May. Should they fail to agree by then, the president of the constitutional court is to appoint the head. All Bloch-Bauer heirs have jointly concluded the arbitration agreement (in contrast to the California lawsuit, where the majority of heirs did not join Altmann). The panel is to render a decision by Nov. 11. The agreement stipulates that parties will be bound by the Arbitration Panel's decision. If the Panel rules in favor of Altmann, the agreement provides for restitution of the paintings. (The GoA would then probably try to negotiate a purchase of the paintings, since they do not want them to leave Austria.)

18. (SBU) COMMENT: The IKG-GOA agreement is a major breakthrough and reflects the resolution of a longstanding conflict over financial issues. (In effect, it closes the chapter opened by Muzicant on January 17, 2001 when he declined to endorse the Washington Agreement.) Together with the arbitration agreement in the Altmann case, it provides positive momentum which may contribute to a resolution of the Whiteman case -- and may also serve to accelerate substantially payments from the GSF.

19. (SBU) ACTION REQUEST (FOR EUR/OHI): In connection with the current efforts to speed up processing of claims filed with the GSF, MFA again approached us on May 23, asking the USG to reconsider its position on financing the activities of the USG-nominated member of the GSF Claims Committee, Professor Vivian Curran (ref b). It appears that the Austrian government is seeking a gesture to indicate that the current U.S. administration remains fully committed to the process launched through the January 2001 Washington Agreement. Embassy realizes that a direct payment from the State Department to the University of Pittsburgh in compensation for the loss of Prof. Curran's services is not possible. However, we could envision taking some other action - perhaps through Public Affairs programs, such as academic exchanges - that would indirectly address GoA concerns. Please advise.

BROWN